IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

WP(C).No. 3440 of 2007(H)

AGAINST THE ORDER IN IA 1091/04 IN
CMA.19/2004 of SUB COURT, CHERTHALA
OS.299/2002 of PRL.MUNSIFF COURT, CHERTHALA

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PETITIONER:

R.K. MONY, SUNIL NIVAS,
ELAMKULAM ROAD, KALOOR P.O.,
ERNAKULAM.

BY ADV. SRI.LIJU. M.P
SRI.R.RAMESH

RESPONDENTS:

AROOR GRAMA PANCHAYATH,
(SPECIAL GRADE), AROOR,
REP. BY ITS SECRETARY.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE JUDGMENT DT.29.7.03 IN O.S.299/02 OF PRINCIPAL MUNSIFF COURT, CHERTHALA

EXT.P2: -DO- OF THE DECREE DT.29.7.03 IN O.S.299/02 OF -DO-

EXT.P3: -DO- OF THE AFFIDAVIT AND PETITION, I.A.2585/03 IN O.S.299/02 DT.7.8.03 OF -DO-

EXT.P4: -DO- DT.5.8.04 IN I.A.2585/03 IN O.S.299/02 OF -DO-

EXT.P5: -DO- OF C.M.A.19/04 DT.18.10.04 OF PRINCIPAL SUB COURT, CHERTHALA

EXT.P6: -DO- OF PETITION AND AFFIDAVIT DT.18.10.04 IN I.A.1091/04 IN C.M.A.19/04 OF -DO-

EXT.P7: -DO- OF THE ORDER DT.17.11.06 IN I.A.1091/04 IN C.M.A.19/04 OF SUB COURT, CHERTHALA

EXT.P8: -DO- OF THE ORDER IN C.M.A.NO:19/04 DT.17.11.2006 OF THE -DO-

jj /TRUE COPY/

P.A.TO JUDGE

M.N.KRISHNAN, J.

WP(C)No. 3440 OF 2007 H

Dated this the 21st June, 2007.

JUDGMENT

This writ petition is filed seeking to quash Ext.P7 order. A suit was decreed ex parte against the defendant and he filed an application for setting aside the ex parte decree which was dismissed by the court below and against that the writ petitioner filed a C.M.A with a petition to condone the delay of ten days. The learned Subordinate Judge found that there are no reasons to condone the delay of 10 days and dismissed the application and as a consequential order dismissed the C.M.A. It is against that the present writ petition is filed. Now the petitioner has filed an application to amend the writ petition for setting aside the order in the C.M.A as well.

2. Heard both sides. The delay that had occurred in filing the C.M.A is just 10 days. It is a settled principle that broad principles of natural justice demand opportunity to be given to the parties to be heard on merits. There is no gross negligence. The learned Subordinate Judge should have used her discretion to enable the party to put forward their case on merits instead of dismissing the application for condonation of delay of hardly ten days. Interest of justice requires interference

and therefore the order under challenge i.e., both the condonation application as well as the C.M.A are set aside, delay is condoned. The learned Subordinate Judge is directed to restore the C.M.A. to file and dispose of the matter in accordance with law, within a time frame of four months from today. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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